

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1235**

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**Introduced by Assembly Member Gipson**

February 27, 2015

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*An act to amend Section 14005.12 of the Welfare and Institutions Code, relating to Medi-Cal.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1235, as amended, Gipson. ~~Long-term care: Medi-Cal: beneficiary maintenance needs: home upkeep allowance: personal and incidental needs allowance.~~

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid provisions. Qualified individuals under the Medi-Cal program include medically needy persons and medically needy family persons who meet the required eligibility criteria, including applicable income requirements.

Existing law requires the department to establish income levels for maintenance need at the lowest levels that reasonably permit a medically needy individual to meet his or her basic needs for food, clothing, and shelter, and for which federal financial participation will still be provided under applicable federal law. In calculating the income of a medically needy individual in a medical institution or nursing facility, or a person receiving institutional or noninstitutional services from a Program of All-Inclusive Care for the Elderly organization, the required monthly maintenance amount includes, among other things, an amount providing

for the upkeep and maintenance of the individual's home. This amount is also referred to as the home upkeep allowance.

*Existing law requires that the maintenance of need amount provide for personal and incidental needs in an amount not less than \$35 for a person in a medical institution or nursing facility, or for a person receiving institutional or noninstitutional services from a Program of All-Inclusive Care for the Elderly organization.*

Existing law authorizes the Director of Health Care Services to adopt, amend, or repeal reasonable rules and regulations to carry out the purposes and intent of the Medi-Cal program, that are not inconsistent with any state statute. The department has adopted regulatory requirements relating to the determination of the ~~above~~ home upkeep allowance *described above*.

*This bill would increase the above-specified personal and incidental needs allowance to an amount not less than \$80. Because counties are required to make Medi-Cal eligibility determinations and this bill would expand Medi-Cal eligibility, the bill would impose a state-mandated local program.*

This bill would *further* declare the intent of the Legislature to enact legislation to prohibit the use of in-kind value of housing as a basis for calculating the home upkeep allowance for a patient in long-term care and prohibit eligibility for the allowance from being based on the date when patient status is established, and to require the calculation for the allowance to be based on the actual cost of maintaining the patient's home. The bill would declare the intent of the Legislature to enact legislation to require the department to adopt conforming regulations, and to notify specified parties of those regulatory changes. The bill would declare the Legislature's intent to enact legislation to require the department to advise appropriate Medi-Cal patients of the availability of the home upkeep allowance.

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 14005.12 of the Welfare and Institutions*  
2     *Code is amended to read:*

3     14005.12. (a) For the purposes of Sections 14005.4 and  
4     14005.7, the department shall establish the income levels for  
5     maintenance need at the lowest levels that reasonably permit  
6     medically needy persons to meet their basic needs for food,  
7     clothing, and shelter, and for which federal financial participation  
8     will still be provided under Title XIX of the federal Social Security  
9     Act. It is the intent of the Legislature that the income levels for  
10    maintenance need for medically needy aged, blind, and disabled  
11    adults, in particular, shall be based upon amounts that adequately  
12    reflect their needs.

13    (1) Subject to paragraph (2), reductions in the maximum aid  
14    payment levels set forth in subdivision (a) of Section 11450 in the  
15    1991–92 fiscal year, and thereafter, shall not result in a reduction  
16    in the income levels for maintenance under this section.

17    (2) (A) The department shall seek any necessary federal  
18    authorization for maintaining the income levels for maintenance  
19    at the levels in effect June 30, 1991.

20    (B) If federal authorization is not obtained, medically needy  
21    persons shall not be required to pay the difference between the  
22    share of cost as determined based on the payment levels in effect  
23    on June 30, 1991, under Section 11450, and the share of cost as  
24    determined based on the payment levels in effect on July 1, 1991,  
25    and thereafter.

26    (3) Any medically needy person who was eligible for benefits  
27    under this chapter as categorically needy for the calendar month  
28    immediately preceding the effective date of the reductions in the  
29    minimum basic standards of adequate care for the Aid to Families  
30    with Dependent Children program as set forth in Section 11452.018  
31    made in the 1995–96 Regular Session of the Legislature shall not  
32    be responsible for paying his or her share of cost if all of the  
33    following apply:

34    (A) He or she had eligibility as categorically needy terminated  
35    by the reductions in the minimum basic standards of adequate care.

36    (B) He or she, but for the reductions, would be eligible to  
37    continue receiving benefits under this chapter as categorically  
38    needy.

1 (C) He or she is not eligible to receive benefits without a share  
2 of cost as a medically needy person pursuant to paragraph (1) or  
3 (2).

4 (b) In the case of a single individual, the amount of the income  
5 level for maintenance per month shall be 80 percent of the highest  
6 amount that would ordinarily be paid to a family of two persons,  
7 without any income or resources, under subdivision (a) of Section  
8 11450, multiplied by the federal financial participation rate.

9 (c) In the case of a family of two adults, the income level for  
10 maintenance per month shall be the highest amount that would  
11 ordinarily be paid to a family of three persons without income or  
12 resources under subdivision (a) of Section 11450, multiplied by  
13 the federal financial participation rate.

14 (d) For the purposes of Sections 14005.4 and 14005.7, for a  
15 person in a medical institution or nursing facility, or for a person  
16 receiving institutional or noninstitutional services from a Program  
17 of All-Inclusive Care for the Elderly organization pursuant to  
18 Chapter 8.75 (commencing with Section 14591), the amount  
19 considered as required for maintenance per month shall be  
20 computed in accordance with, and for those purposes required by,  
21 Title XIX of the federal Social Security Act, and regulations  
22 adopted pursuant thereto. Those amounts shall be computed  
23 pursuant to regulations which include providing for the following  
24 purposes:

25 (1) Personal and incidental needs in the amount of not less than  
26 ~~thirty-five dollars (\$35)~~ *eighty dollars (\$80)* per month while a  
27 patient. The department may, by regulation, increase this amount  
28 as necessitated by increasing costs of personal and incidental needs.  
29 A long-term health care facility shall not charge an individual for  
30 the laundry services or periodic hair care specified in Section  
31 14110.4.

32 (2) The upkeep and maintenance of the home.

33 (3) The support and care of his or her minor children, or any  
34 disabled relative for whose support he or she has contributed  
35 regularly, if there is no community spouse.

36 (4) If the person is an institutionalized spouse, for the support  
37 and care of his or her community spouse, minor or dependent  
38 children, dependent parents, or dependent siblings of either spouse,  
39 provided the individuals are residing with the community spouse.

1 (5) The community spouse monthly income allowance shall be  
2 established at the maximum amount permitted in accordance with  
3 Section 1924(d)(1)(B) of Title XIX of the federal Social Security  
4 Act (42 U.S.C. Sec. 1396r-5(d)(1)(B)).

5 (6) The family allowance for each family member residing with  
6 the community spouse shall be computed in accordance with the  
7 formula established in Section 1924(d)(1)(C) of Title XIX of the  
8 federal Social Security Act (42 U.S.C. Sec. 1396r-5(d)(1)(C)).

9 (e) For the purposes of Sections 14005.4 and 14005.7, with  
10 regard to a person in a licensed community care facility, the amount  
11 considered as required for maintenance per month shall be  
12 computed pursuant to regulations adopted by the department which  
13 provide for the support and care of his or her spouse, minor  
14 children, or any disabled relative for whose support he or she has  
15 contributed regularly.

16 (f) The income levels for maintenance per month, except as  
17 specified in subdivisions (b) to (d), inclusive, shall be equal to the  
18 highest amounts that would ordinarily be paid to a family of the  
19 same size without any income or resources under subdivision (a)  
20 of Section 11450, multiplied by the federal financial participation  
21 rate.

22 (g) The “federal financial participation rate,” as used in this  
23 section, shall mean  $133\frac{1}{3}$  percent, or such other rate set forth in  
24 Section 1903 of the federal Social Security Act (42 U.S.C. Sec.  
25 1396(b)), or its successor provisions.

26 (h) The income levels for maintenance per month shall not be  
27 decreased to reflect the presence in the household of persons  
28 receiving forms of aid other than Medi-Cal.

29 (i) When family members maintain separate residences, but  
30 eligibility is determined as a single unit under Section 14008, the  
31 income levels for maintenance per month shall be established for  
32 each household in accordance with subdivisions (b) to (h),  
33 inclusive. The total of these levels shall be the level for the single  
34 eligibility unit.

35 (j) The income levels for maintenance per month established  
36 pursuant to subdivisions (b) to (i), inclusive, shall be calculated  
37 on an annual basis, rounded to the next higher multiple of one  
38 hundred dollars (\$100), and then prorated.

1     ~~SECTION 1.~~

2     SEC. 2. (a) It is the intent of the Legislature to enact legislation  
3 to do all of the following, with respect to the Medi-Cal home  
4 upkeep allowance that may be available to long-term care residents:

5       (1) Prohibit the use of in-kind value of housing as a basis for  
6 calculating the home upkeep allowance for a patient in long-term  
7 care.

8       (2) Prohibit eligibility for the allowance being based on the date  
9 when patient status is established.

10       (3) Require the calculation for the allowance to be based on the  
11 actual cost of maintaining the patient's home.

12     (b) It is the intent of the Legislature to enact legislation to require  
13 the State Department of Health Care Services to do all of the  
14 following:

15       (1) Adopt or revise regulations to reflect the requirements of  
16 paragraphs (1) to (3), inclusive, of subdivision (a).

17       (2) Notify all Medi-Cal branches, eligibility workers, long-term  
18 care facilities, hospital discharge planners, and organizations  
19 receiving state funds to assist nursing home residents, of the new  
20 regulatory requirements.

21       (3) Ensure that all Medi-Cal patients who are discharged to or  
22 residing in a long-term care facility are informed of the availability  
23 of the allowance.

24     SEC. 3. *If the Commission on State Mandates determines that*  
25 *this act contains costs mandated by the state, reimbursement to*  
26 *local agencies and school districts for those costs shall be made*  
27 *pursuant to Part 7 (commencing with Section 17500) of Division*  
28 *4 of Title 2 of the Government Code.*